

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10989 of 1995

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 TO 5 - NO

A A SHAIKH

Versus

GUJARAT FISHERIES CENTRAL CO OP ASSOCIATION LTD

Appearance:

MR IS SUPEHIA for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 13/08/97

ORAL JUDGEMENT

The respondent herein is a Co-operative Society (hereinafter referred to as "the Association") established by the State Government for development and research of fisheries in the State. The Association undertakes Projects of research and development in fisheries and also undertakes Projects which are proposed

and aided by the Central Government. In the course of such activities, the Association had undertaken a Project known as " Integrated Reservoir Fisheries Development Project". sponsered by the National Co-operative Development Corporation (in short, known as " NCDC Project"). With a view to implementing the NCDC Project, a special establishment was sanctioned and personnel were appointed according to the said sanction. One of the posts sanctioned was that of Extension Officer (Audio). Under office order dated 11th April, 1990 issued by the Managing Director of the Association, the petitioner herein was appointed as Extension Officer (Audio) in the scale of Rs. 1300-3200. On completion of period of one year of probation, under order dated 21st August, 1991 made by the Managing Director of the Association, the petitioner's probation was terminated with effect from 23rd April, 1991 and he was continued on long term basis. Under order dated 12th December, 1995 made by the Managing Director of the Association, the petitioner's service was terminated with effect from 15th December, 1995. Feeling aggrieved, the petitioner has preferred this petition. Learned advocate Mr. Supehia has appeared for the petitioner and has submitted that the impugned order of termination is vitiated on the following grounds :

- (a) The petitioner was not afforded an opportunity of hearing before termination of his service.
- (b) Other officers appointed under NCDC Project were absorbed on the regular establishment of the Association and a similar treatment ought to have been extended to the petitioner also. If it were not possible to absorb the petitioner on an equivalent post, he could have been offered any post which may be inferior to the post of Extension Officer (Audio).
- (c) Under the Service Regulations framed by the Association, the Chairman is empowered to terminate the service of its employees and the impugned order made by the Managing Director, therefore, is without authority of law and is void-ab-initio.

3. In support of his contention, Mr. Supehia has relied upon the judgment of this court in the matter of ASSOCIATION OF OFFICERS G.S.F.C. & ORS VS GUJARAT STATE FERTILIZERS COMPANY & ANR (1986 (2) LLJ, 238). In the said matter, court was examining Rule-44 of the Service Rules. Said Rule-44 empowered the Company to discharge

an employee from service of the Company for sufficient reason by the competent appointing authority. The court held that, " expression "sufficient reasons" or "sufficient cause" indicates that an enquiry is contemplated before an employee can be discharged. It is implicit in the rule to hold an enquiry before the employee could be discharged under Rule-44 ". On facts, the court found the order of discharge to be penal and quashed the same. In my view, this judgment shall have no applicability on the facts of the present case. Neither the petitioner's discharge from service is penal, nor there is provision similar to one which is found in the above referred Rule-44. Under the rule, that governs the petitioner's service condition, the Chairman of the Association is empowered to terminate the service of any employee at any time after expiry of the period of probation. Thus, in my view, no inquiry is contemplated under the above referred Rule before the order of termination of service is made under the said Rule. Mr. Supehia has next relied upon the judgment of the Supreme Court in the matter of NATIONAL TEXTILE WORKERS' UNION ETC. VS. P.R. RAMKRISHNAN & ORS (AIR 1983, SC, 75). In that matter, the court was considering the right of the workmen to be heard in course of hearing of winding up petition. The court held that, " workers have a locus to appear and be heard in the winding up petition both before the winding up petition is admitted and an order for advertisement is made as also after the admission and advertisement of the winding up petition until an order is made for winding up the company ". Obviously, on the facts of the present case, the said judgment can have no applicability. Next, he relied upon the judgment of this court in the matter of VISHVANATH VAIRUPATHI KITTUR VS STATE OF GUJARAT & ANR (19 GLR, 367) Relying upon the said judgment, Mr. Supehia has submitted that that as and when the post is abolished, the employee concerned must be offered an alternative post. In absence of any equivalent post available on the establishment, it is the duty of the employer to offer lower post. In the said judgment, the court has held that, " The power to create, continue and abolish any civil post is inherent in every sovereign Government and such a decision, if taken in good-faith can not be set aside by the court." However, considering Rule-266 of the Bombay Civil Services Rules, the court held that, " It is quite conceivable that in a certain case, there may not be a post which can be offered. In such a case, the question of offering an alternative post does not arise. But if there is a post which can be offered, then it is not open to the State Government under Rule-266 to say that they may or may not offer it and that they can force a permanent employee out

of job upon the abolition of a permanent post which he held ". I shall examine the applicability of this ruling to the facts of the present case hereafter.

3. Learned advocate Mr. Munshaw appearing for the Association has submitted that several posts were created for the purpose of carrying on the objects of the NCDC Project, and several officers were appointed on the establishment of the Association solely for the furtherance of the NCDC Project and the petitioner was one of them. He submitted that the said Project could not be successfully steered, as a result, the Project incurred heavy loss. Considering the heavy loss suffered by the NCDC, the term of the said Project was not extended after completion of the initial period of five years. With the closure of the Project, the employees appointed for the furtherance of the Project were required to be discharged from service. Some of the employees who possessed the requisite qualification and who could be absorbed on the regular establishment of the Association, were absorbed on the regular establishment. Some of such employees were the employees of the Association and were placed in charge of the functions relating to the NCDC Project. Such employees also were absorbed back on the regular establishment of the Association. However, the petitioner being an Extension Officer (Audio), possessed special qualification. Having regard to the special qualification possessed by the petitioner, he could not be offered alternative post on the establishment of the Association. The petitioner has not been able to point out that a single vacancy exists on the establishment of the Association, on which the petitioner could have been absorbed. Thus, if the petitioner could not be absorbed for want of suitable post, the order of termination of service can not be held to be bad or vitiated. In the judgment of Vishvanath Vairupathi (Supra) also, the court has held that, " so long as an alternative post could be offered to a permanent employee, he should not be discharged from service on abolition of post ". The court further held that, " if there is a post which can be offered, then it is not open to the State Government not to offer the same ". In the present case, the petitioner has not been able to establish that there was a post which could have been offered to the petitioner and which has not been offered to him. The Association, therefore, can not be compelled to absorb the petitioner on its establishment.

4. Mr. Supehia has emphasised Regulation 16 of the

Service Regulations and has submitted that it is the Chairman alone, who has the power to terminate the service of a permanent employee after giving a notice or salary in lieu thereof as provided in the said Regulation. The impugned order made by the Managing Director having been made without the authority of law is vitiated. In reply to the said contention, Mr. Munshaw has relied upon the Bye-laws of the Association. Bye-law No. 62 vests the entire power of administration, management and control of the Association in the Board of Directors. Bye-law No. 63 provides that without prejudice to the general power conferred under the Rules, the following powers are expressly vested in and may be exercised by the Board. Clause (2) thereof empowers the Board of Directors to appoint officers and staff for execution of the affairs of the Association and to take disciplinary action including removal from service of the Association. Clause-22 thereof empowers the Board of Directors to delegate any of the powers to the Executive or other Committees of the Board or to the Chairman, Managing Director, General Manager or any other employee. Under the said power, the Board of Directors has framed Staff Regulations, 1962. Under the said Staff Regulations, in Section-III, under Rule-16, power to terminate service of an employee at any time after expiry of period of probation, has been conferred upon the Chairman. However, under subsequent Resolution passed by the Board of Directors in the meeting held on 19th April, 1979, said powers have been vested in the Managing Director. Mr. Munshaw has submitted that in view of the said Resolution of 19th April, 1979, which has been given effect from 1st May, 1979, it was the Managing Director who was vested with the powers of appointment and termination of service of employees. It was under that power that the Managing Director had issued the order of appointment to the petitioner, and under the very power, the Managing Director has terminated the service of the petitioner. The said order, therefore, can not be said to have been made without the authority of law. Mr. Supehia has submitted that the said power is required to be exercised in accordance with Rules and if the Rules require that the order of termination be made by the Chairman, the Managing Director could not have made the order of termination. I am unable to accept the contention raised by Mr. Supehia. Once the power has been shifted to the Managing Director, the Managing Director is supposed to act in accordance with law.. The expression "as per rules" must be read to mean that the power to be exercised by the Managing Director shall be exercised in accordance with rules. In view of the above Resolution dated 19th April, 1979, it must be held that

the Staff Regulations framed by the Board of Directors under the power vested into it under Bye-law No.62, has been amended and the power that had been hitherto enjoyed by the Chairman had now been conferred upon the Managing Director. The impugned order, therefore, can not be said to have been made without the authority of law.

5. Mr. Supehia has vehemently argued that NCDC Project is not yet closed and officers serving under the said Project have been continued in service of the Association. Mr. Munshaw has emphatically denied the assertion made by Mr. Supehia. He has submitted that that the NCDC Project is closed. However, the Association is required to recover the amounts of loans advanced in course of the said Project. The Association, therefore, recovers the loans and performs the skeletal duties which are required to be completed through its own staff. He has further submitted that the Civil Engineer has been retained in service because the Association owns certain fish-ponds, for which the service of the Civil Engineer is required and the Association is paying the said Civil Engineer out of its funds.

6. It is undisputed that the petitioner was appointed for carrying on the NCDC Project. The petitioner's service has been terminated on account of the closure of the said Project. The petitioner could not be offered alternative employment for want of suitable post on the establishment of the Association. The petitioner has been paid salary in lieu of notice and the order made by the Managing Director is made under the powers conferred upon him. Further, I am of the opinion that the impugned order is an administrative order. The service of the petitioner has been terminated on the administrative grounds. The petitioner, therefore, was not required to be heard before the said order was made. In that view of the matter, the order of termination of service can not be held to be illegal or contrary to law in any manner. Besides, whether the alternative post or a post inferior to the post held by the petitioner was available or not, is a disputed question of fact. This court, while exercising its extra ordinary jurisdiction under Article 226 of the Constitution, can not enter into the disputed question of fact.

7. Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

* * * *

JOSHI